

AMENDED IN SENATE MAY 1, 2008
AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1596

Introduced by Senator Yee

February 22, 2008

An act to amend Sections 10507.7 and 10509 of the Public Contract Code, relating to the University of California.

LEGISLATIVE COUNSEL'S DIGEST

SB 1596, as amended, Yee. University of California: public contracts.

Existing law requires the Regents of the University of California, in accordance with certain requirements, to let a contract involving an expenditure of more than \$50,000 annually for purchases of goods, materials, and services, to the lowest responsible bidder or to reject all bids. Existing law also requires the regents to prescribe methods of procurement of goods, materials, and services to be purchased.

This bill would specify that the term of a contract for goods, materials, or services may not exceed 3 years, and that extensions of the contract may not exceed one year. This bill would require that these contracts be advertised in the State Contracts Register, would require that a data warehouse of contractor and contract information be maintained, and would further require that a contractor responsibility program be established in which a contractor or subcontractor and its principals would be required to complete questionnaires. This bill also would impose a civil penalty, not to exceed \$10,000 for each violation, on a person or entity that fails to comply with contractor responsibility program requirements or that knowingly provides false information. These provisions would be effective on and after January 1, 2009.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10507.7 of the Public Contract Code is
2 amended to read:

3 10507.7. (a) Except as provided for in this article, the Regents
4 of the University of California shall let all contracts involving an
5 expenditure of more than fifty thousand dollars (\$50,000) annually
6 for goods and materials to be sold to the University of California
7 to the lowest responsible bidder meeting specifications, or else
8 reject all bids. Contracts for services to be performed, other than
9 personal or professional services, involving an expenditure of fifty
10 thousand dollars (\$50,000) or more annually shall be made or
11 entered into with the lowest responsible bidder meeting
12 specifications, or else all bids shall be rejected. If the regents deem
13 it to be for the best interest of the university, the regents may, on
14 the refusal or failure of the successful bidder for materials, goods,
15 or services to execute a tendered contract, award it to the second
16 lowest responsible bidder meeting specifications. If the second
17 lowest responsible bidder fails or refuses to execute the contract,
18 the regents may likewise award it to the third lowest responsible
19 bidder meeting specifications.

20 (b) On and after January 1, 2009, to ensure a competitive
21 marketplace for contracts with the University of California, the
22 term of a contract for goods, materials, or services shall not exceed
23 three years. That contract may have one or more extensions, but
24 the cumulative term of all extensions shall not exceed one year.

25 SEC. 2. Section 10509 of the Public Contract Code is amended
26 to read:

27 10509. (a) The Regents of the University of California shall
28 prescribe methods of procurement for goods, materials, and
29 services to be purchased, including:

30 (1) Requirements for public advertisement where feasible and
31 practicable or for solicitation from at least three sources in other
32 cases.

33 (2) Bidder prequalification and evaluation standards.

34 (3) Guidelines for negotiating contracts for unique products or
35 proprietary services.

1 (4) Procedures for solicitation of vendor and service contractor
2 interest.

3 (5) Dissemination of award information.

4 (6) Such other matters as may encourage the receipt of the most
5 favorable price and conditions of purchase by the university.

6 (b) (1) The Regents of the University of California shall
7 establish a contractor responsibility program to ensure that
8 contractors and their subcontractors who wish to contract with the
9 regents comply with local, state, and federal laws, including, but
10 not limited to, laws affecting employees regarding health and
11 safety, labor and employment, wage and hours, and licencing laws.

12 (2) This program shall require contractors and their
13 subcontractors who wish to be considered for an award of a contract
14 to complete and have on file with the regents a questionnaire for
15 the contractor and each subcontractor and their principals ~~that has~~
16 ~~been developed by an independent expert.~~ The questionnaire shall
17 be valid for three years from the date executed, but either must be
18 updated prior to the award of a new contract or the amendment or
19 extension of an existing contract, or a certification of no change
20 must be executed. The questionnaire shall include, but is not limited
21 to, all of the following questions:

22 (A) Are there or have there been any judgments, injunctions,
23 or liens, including, but not limited to, judgments based on taxes
24 owed, fines and penalties assessed by any government agency,
25 elected official, or initiated against the submitting contractor or
26 any affiliate at any time within the past five years or that remain
27 open, unsatisfied, or in effect today?

28 (B) Has the submitting contractor or any affiliate ever been
29 debarred from entering into any government contract, found
30 nonresponsible on any government contract, declared in default
31 or terminated for cause, determined to be ineligible to bid or
32 propose on any contract, suspended from bidding or entering into
33 any government contracts, or received an overall unsatisfactory
34 performance rating from any government agency on any contract?

35 (C) Have any bankruptcy proceedings been initiated by or
36 against the submitting contractor or any affiliate within the past
37 seven years, whether or not closed, or is any bankruptcy proceeding
38 pending by or against the submitting contractor or any affiliate
39 regardless of date of filing?

1 (D) In the past five years or currently pending, has the
2 submitting contractor, any of its principal owners or officers, or
3 any affiliate had any permit, license, concession, franchise, or lease
4 terminated for cause or revoked, or been disqualified for cause as
5 a bidder on any permit, license, concession, franchise, or lease?

6 (E) In the past five years, has the submitting contractor or any
7 affiliate or any individual currently or within that period serving
8 as a principal owner, officer, or managerial employee been
9 investigated by any government agency, including, but not limited
10 to, federal, state, and local regulatory agencies in the United States?

11 (F) Has the submitting contractor, any affiliate, or any of their
12 current or former principal owners, officers, or managerial
13 employees been convicted of a misdemeanor or found in violation
14 of any administrative, statutory, or regulatory provisions in the
15 past five years, been convicted of a felony, or any crime related
16 to truthfulness or business conduct in the past 10 years, or have
17 any felony, misdemeanor, or administrative charges currently
18 pending?

19 (G) For the past five years, has the submitting contractor or any
20 of its principal owners, officers, or any affiliate had any sanction
21 imposed as a result of judicial or administrative disciplinary
22 proceedings with respect to any professional license held?

23 (H) Other than the submitting contractor's employees, did the
24 submitting contractor retain, employ, or designate anyone to
25 influence the preparation of contract specifications, or the
26 solicitation or award of any contract during the past three years?

27 *(I) For prospective contractors, list the following information*
28 *regarding the department or division of the University of California*
29 *to which you are submitting this questionnaire to be considered*
30 *for a contract: the campus or medical center, the department or*
31 *division awarding the contract, the university contact person's*
32 *full name and telephone number, and the university bid or contract*
33 *number, if any.*

34 *(J) List the business name of the bidder or proposer, its federal*
35 *employer identification number, street address, city, state, zip*
36 *code, and its contact person's full name, title, telephone number,*
37 *and facsimile number.*

38 *(K) State whether the questionnaire is an initial submission of*
39 *a completed questionnaire, an update of a prior questionnaire of*

1 *a specified date, or a no change questionnaire since the last*
2 *responsibility questionnaire of a specified date was submitted.*

3 *(L) State the business structure of your firm. A firm may include*
4 *a sole proprietorship, partnership, corporation, limited liability*
5 *company, joint venture, consortium, association, or other business*
6 *entity or any combination thereof.*

7 *(M) If the firm is a corporation, provide the date incorporated,*
8 *state of incorporation, and the full name of each of the*
9 *corporation's current officers, including its president, vice*
10 *president, secretary, and treasurer.*

11 *(N) If the firm is a publicly traded corporation, list the full*
12 *names of those persons or entities that own 5 percent or more of*
13 *the corporation's stock.*

14 *(O) If the firm is a limited liability company, provide the date*
15 *of formation, state of formation, and the full name of each of its*
16 *managers, officers, if any, and members who own 5 percent or*
17 *more of the ownership interest of the company.*

18 *(P) If the firm is a partnership, provide the date of formation,*
19 *state of formation, and the full name of each partner.*

20 *(Q) If the firm is a sole proprietorship, provide the date the*
21 *business started, and list any firm with which the sole proprietor*
22 *has been associated as a partner, officer, or owner of 5 percent*
23 *or more of the firm's stock or other ownership interest for the last*
24 *five years.*

25 *(R) If the firm is a joint venture, provide the date of formation,*
26 *the name of each member of the joint venture, and the ownership*
27 *interest each member has or will have in the joint venture. Each*
28 *member of the joint venture also must complete a separate*
29 *questionnaire for the joint venture's submission to be considered*
30 *responsive.*

31 *(S) Indicate whether the firm is a subsidiary, parent, holding*
32 *company, or affiliate of another firm, and explain the relationship*
33 *between the firm and the associated firms. Include information*
34 *about an affiliated firm only if one firm owns 5 percent or more*
35 *of the stock or ownership interests in another firm, or if an owner,*
36 *partner, or officer of your firm holds a similar position in another*
37 *firm.*

38 *(T) Indicate whether any of the firm's owners, partners, officers,*
39 *or managerial employees operated a similar business in the past*
40 *five years, list the names and addresses of each business, and*

1 *provide the full name of the person or persons who operated the*
2 *business. Include information about a similar business only if an*
3 *owner, partner or officer of the firm holds or held a similar position*
4 *in the other firm.*

5 *(U) Has the firm changed its name in the past five years? If so,*
6 *list all prior names of the firm, its addresses, and the dates the*
7 *names were used. Explain the reason for each name change.*

8 *(V) Are any of the firm's licenses held in the name of a*
9 *corporation or partnership or other person or entity? List the name*
10 *of the corporation or partnership or other person or entity that*
11 *actually holds the license.*

12 *(W) Is your firm now, or has it ever been at any time in the last*
13 *five years, the debtor in a bankruptcy case? Explain the*
14 *circumstances surrounding each instance.*

15 *(X) Is your company in the process of, or in negotiations toward,*
16 *being sold? Explain the circumstances.*

17 *(Y) How many years has your firm been in business?*

18 *(Z) Has your firm ever held a contract with any division or*
19 *department of the University of California? If so, list all contracts*
20 *your firm has had with the University of California during the past*
21 *10 years. For each contract listed in response to this question,*
22 *include the firm name, the division or department of the University*
23 *of California the contract was with, the purpose of the contract,*
24 *and its total cost, starting date, and ending date.*

25 *(AA) List each contract the firm has had with a public utility,*
26 *private entity, or governmental entity other than the University of*
27 *California over the last five years that is similar to the work to be*
28 *performed on the contract for which the firm is bidding or*
29 *proposing. For each contract listed in response to this question,*
30 *include the name of the entity, the purpose of the contract, and its*
31 *total cost, starting date, and ending date.*

32 *(AB) In the past five years, has a governmental or private entity*
33 *or other person terminated your firm's contract prior to completion*
34 *of the contract? Explain the circumstances surrounding each*
35 *instance.*

36 *(AC) In the past five years, has your firm used any subcontractor*
37 *to perform work on a government contract when your firm knew*
38 *that the subcontractor had been debarred by a governmental*
39 *entity? If yes, explain the circumstances surrounding each instance.*

1 (AD) *In the past five years, has your firm been debarred or*
2 *determined to be a nonresponsible bidder or contractor? If yes,*
3 *explain the circumstances surrounding each instance.*

4 (AE) *In the past five years, has your firm been a defendant in*
5 *court, or been in arbitration without court litigation, on a matter*
6 *related to payments to subcontractors, work performance on a*
7 *contract, or an employment-related matter brought by an*
8 *employee? Explain the circumstances surrounding each instance*
9 *and include the full name of each plaintiff, or person in arbitration,*
10 *the specific causes of action in each matter, the date each matter*
11 *was filed or commenced, and the disposition or current status of*
12 *each matter.*

13 (AF) *Does your firm have any outstanding judgments pending*
14 *against it? Explain the circumstances surrounding each instance.*

15 (AG) *In the past five years, has your firm been assessed*
16 *liquidated damages on a contract? Explain the circumstances*
17 *surrounding each instance and identify all contracts, the amount*
18 *assessed and paid, and the name and address of the project owner.*

19 (AH) *In the past five years, has your firm or any of its partners,*
20 *officers, or owners of 5 percent or more of the ownership interests*
21 *or stock of the firm ever been investigated, cited, assessed any*
22 *penalties, or been found to have violated any laws, rules, or*
23 *regulations enforced or administered by a governmental entity?*
24 *Explain the circumstances surrounding each instance, including*
25 *the entity that was involved, the dates of each instance, and the*
26 *outcome.*

27 (AI) *In the past five years, if a license was required to perform*
28 *any services provided by your firm, has your firm, any affiliate,*
29 *or any person employed by your firm, been investigated, cited,*
30 *assessed any penalties, subject to any disciplinary action by a*
31 *licensing agency, or found to have violated any licensing laws?*
32 *Explain the circumstances surrounding each instance.*

33 (AJ) *Is a governmental entity or public utility currently*
34 *investigating your firm for making a false claim or material*
35 *misrepresentation, or, during the past five years, has a*
36 *governmental entity or public utility alleged or determined that*
37 *your firm made a false claim or material misrepresentation? In*
38 *the past five years, has your firm been convicted in a criminal suit*
39 *or found liable in a civil suit for making a false claim or material*

1 *misrepresentation to any governmental entity or public utility?*

2 *Explain the circumstances surrounding each instance.*

3 *(AK) In the past five years, has your firm or any of its owners*
4 *or officers been convicted of a crime involving the bidding of a*
5 *government contract, the awarding of a government contract, the*
6 *performance of a government contract, or the crime of fraud, theft,*
7 *embezzlement, perjury, or bribery? Explain the circumstances*
8 *surrounding each instance.*

9 *(AL) List the firm's Data Universal Numbering System number*
10 *(DUNS number) and national or regional stock exchange or*
11 *NASDAQ listing, if any.*

12 *(AM) Does your firm now use, or has it in the past 10 years*
13 *used, an employer identification number (EIN), taxpayer*
14 *identification number (TIN), or social security number (SSN), or*
15 *a fictitious name, trade name, or abbreviation other than the firm*
16 *name and tax identification number that your firm listed in this*
17 *questionnaire? List each instance and include the dates of each.*

18 *(AN) List each instance in which an officer or owner of 5 percent*
19 *or more of the ownership interest or stock of the submitting firm,*
20 *or a member of his or her immediate family, has an ownership*
21 *interest in any entity that holds the title or lease to any real*
22 *property used by any division or department of the University of*
23 *California.*

24 *(AO) List the details of all instances where, within the next three*
25 *years, pursuant to any stock option or other arrangements, an*
26 *individual or entity has the right to acquire ownership interests*
27 *or stock in the submitting firm, which, when combined with the*
28 *current holdings, would make that individual or entity an owner*
29 *of 5 percent or more of the ownership interest or stock of the*
30 *submitting firm.*

31 *(AP) Is 10 percent or more of the submitting firm's stock or*
32 *ownership currently used or pledged as collateral for any loan or*
33 *obligation? List each instance and explain the circumstances.*

34 *(AQ) List all instances in which an individual who now serves,*
35 *or who within the past five years has served, in a managerial or*
36 *consulting capacity to the submitting firm, also has served as an*
37 *elected or appointed public official or officer, as a full- or part-time*
38 *employee of a University of California division or department or*
39 *as a consultant to any University of California division or*
40 *department, as an officer of any political party organization,*

1 *whether paid or unpaid, or as a consultant or adviser to a*
2 *University of California division or department performing services*
3 *related to the solicitation, negotiation, operation, or administration*
4 *of contracts on which the submitting firm will work during the next*
5 *three years.*

6 *(AR) Is the submitting firm exempt from income taxes under the*
7 *Internal Revenue Code?*

8 *(AS) In the past five years, has the submitting firm failed to file*
9 *any applicable federal, state, or city tax returns, or failed to pay*
10 *any applicable federal, state, or city taxes, or other assessed*
11 *charges, including, but not limited to, water and sewer charges?*
12 *Describe each instance.*

13 *(AT) In the past three years, if the submitting firm is a nonprofit*
14 *organization, have any audits of the submitting firm revealed*
15 *material weaknesses in its system of internal controls, compliance*
16 *with contractual agreements, or laws and regulations?*

17 (3) Contractors shall notify the regents within 10 calendar days
18 after receiving notification that a government agency *or elected*
19 *official* has instituted an investigation that may result in a finding
20 that the contractor is not in compliance with the laws described in
21 paragraph (1).

22 (4) A person or entity that fails to comply with this subdivision
23 or that knowingly provides false information in a questionnaire or
24 in any update or certification of no change to a questionnaire as
25 described in paragraph (2) shall be liable for a civil penalty not to
26 exceed \$10,000 for each violation. A public prosecutor may bring
27 a civil action in the name of the people of the State of California
28 in any court of competent jurisdiction to recover the civil penalty.

29 (c) The Regents of the University of California shall cause
30 information for bidding on contracts subject to this article to be
31 published in the State Contracts Register published by the
32 Department of General Services in accordance with the provisions
33 of Chapter 6 (commencing with Section 14825) of Part 5.5 of
34 Division 3 of Title 2 of the Government Code.

35 (d) The Regents of the University of California shall maintain
36 a centralized data warehouse of contractor information and
37 contracts, including, but not limited to, contracts, contractor
38 questionnaires, comparative cost analyses, notifications, and
39 certifications. *The regents shall make the centralized data*

1 warehouse available to the public through computer access service
2 via the Internet.

3 (e) All actions taken by the Regents of the University of
4 California for the development of the responsible contractor
5 program, the development of the questionnaire, and the
6 development of the centralized data warehouse, shall occur in
7 open, public meetings pursuant to the provisions of Article 9
8 (commencing with Section 11120) of Chapter 1 of Part 1 of
9 Division 3 of Title 2 of the Government Code.

10 ~~(e)~~

11 (f) The amendments adding this subdivision shall be effective
12 on and after January 1, 2009, and shall apply to all bidding,
13 contracts, amendments, and extensions occurring on or after
14 January 1, 2009.